

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900

No. 100

WILLIAM DARTER & COMPANY, INC., PLAINTIFF IN
ERROR,

GULF & SHIP ISLAND RAILROAD COMPANY,

IN ERROR TO THE DECISION OF THE SUPREME COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

FILED OCTOBER 10, 1900

(10, 100)

(30,235)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 346

WILLIAM DANZER & COMPANY, INC., PLAINTIFF IN
ERROR,

vs.

GULF & SHIP ISLAND RAILROAD COMPANY

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI

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[fols. 1 & 2] **IN UNITED STATES DISTRICT COURT FOR THE
EASTERN DIVISION OF THE SOUTHERN DISTRICT OF
MISSISSIPPI**

**WILLIAM DANZER & COMPANY, INCORPORATED, a Corporation,
Plaintiff,**

vs.

**GULF & SHIP ISLAND RAILROAD COMPANY, a Corporation, De-
fendant**

BILL OF COMPLAINT—Filed April 28, 1923

The plaintiff claims of the defendant three hundred seven dollars and fifteen cents (\$307.15); with interest from the 3rd day of October, 1917, as reparation on account of damages due to a violation of the Interstate Commerce Act. The plaintiff avers that said violation of the Interstate Commerce Act consisted of the following:

On or about the 30th day of August, 1917, there was shipped from Lyman, Mississippi, a quantity of lumber, to wit, a carload of lath, consigned to Wilkes-Barre, Pennsylvania, and routed "N. & W. and Hagerstown," meaning that the said shipment should be so transported as to move over the lines of the Norfolk & Western Railway Company, and through the city of Hagerstown, Maryland. After said lumber was shipped it was purchased by plaintiff, who, in due time, directed that it be stopped in transit; but the defendant [fol. 3] had misrouted said shipment, contrary to the provisions of the Interstate Commerce Act, and had unlawfully taken or sent it away from the control of the owner thereof by sending it over a wholly unauthorized route so that it became lost to the owner, the defendant's act being tantamount to a wrongful conversion of the property.

The plaintiff further avers that the facts on which said claim is based are set out more fully and are truly stated in a certain report and order of the Interstate Commerce Commission, a full, true and correct copy of which is hereto attached, marked "Exhibit A", and is hereby expressly made a part of this count.

Brenton K. Fisk, Attorney for Plaintiff.

"EXHIBIT A" TO BILL OF COMPLAINT

7665

INTERSTATE COMMERCE COMMISSION

No. 12250

WILLIAM DANZER & COMPANY, INCORPORATED,

vs.

GULF & SHIP ISLAND RAILROAD COMPANY et al.

Submitted August 1, 1921; Decided May 18, 1922

Carload of Lath from Lyman, Mississippi, to Wilkes-Barre, Pa.,
[fol. 4] found misrouted. Damages awarded

Brenton K. Fisk for complainant.

Adams Dodson for Pennsylvania Railroad Company.

Report of the Commission

Division 3, Commissioners Hall, Eastman, and Campbell

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the Examiner. We have reached conclusions differing from those which he recommended.

Complainant, a corporation buying and selling lumber at Hagerstown, Md., by complaint filed February 14, 1921, seeks reparation for damages alleged to have been suffered by it through the misrouting of a carload of lumber. On brief, the Pennsylvania Railroad, one of the defendants, urges that complainant's claim was barred by the statute of limitations at the time of the passage of the transportation act, 1920, and that it was not revived by section 206 (f) of that act, providing that the period of Federal control should not be computed as part of the periods of limitation in claims for reparation arising prior to Federal control. We have found otherwise. *Mulkey Salt Co. v. Director General*, 61 I. C. C., 669.

The shipment, consisting of 96,050 feet of 4-foot No. 2 standard yellow pine lath, weighing 56,100 pounds, was delivered to the Gulf & Ship Island at Lyman, Miss., August 30, 1917, by the Ingram-Day Lumber Company, consigned to V. W. Long Lumber Company, Wilkes-Barre, Pa., routed "N. & W. and Hagerstown." [fol. 5] The same day complainant purchased it as a "speculative buy" and in due course came into possession of the bill of lading. On September 5 it wrote to the Division Freight Agent of the Pennsylvania at Harrisburg, Pa., and to representatives of the

Cumberland Valley at Chambersburg, Pa., and Hagerstown, requesting that the car "be held in transit for diversion." Complainant resold the lath at \$5.00 per 1,000 feet and forwarded the invoice to its customer who, in urgent need of such material, had contracted for it because it was in transit. The Gulf & Ship Island made several attempts to forward the car in accordance with routing instructions by transferring it to the New Orleans & Northeastern at Hattiesburg, Mississippi, but that carrier refused to receive it because of an embargo. Eventually, on September 15, the Gulf & Ship Island turned the car over to the Louisville & Nashville, at Gulfport, Mississippi. Moving over the Louisville & Nashville to Louisville, Ky., and Pennsylvania lines beyond, the car arrived in Wilkes-Barre about October 3 without passing through Hagerstown. The shipment was therefore misrouted.

It appears that when complainant's customer was advised of the arrival of the car at Wilkes-Barre it cancelled the order. While the car was held on the initial line some fourteen or fifteen days, there is no evidence that the sale made by complainant was revoked or that it was obliged to recall its invoice until informed that the car had arrived at Wilkes-Barre. The Pennsylvania refused to forward the car to Hagerstown unless all charges were paid, including demurrage which had accrued as well as the charges for the [fol. 6] movement from Wilkes-Barre to Hagerstown, and complainant declined to accept delivery. Thereupon the lath was sold at auction by the Pennsylvania for \$200.00 and the proceeds applied in partial satisfaction of transportation, demurrage, storage and unloading charges aggregating \$473.51.

Complainant contends that the Gulf & Ship Island could and should have forwarded the car via Gulfport, Miss., and either over the Louisville & Nashville to Birmingham, Ala., Alabama Great Southern to Chattanooga, Tenn., Southern to Bristol, Tenn., and Norfolk & Western to Hagerstown, or over the Louisville & Nashville to Norton, Va., and Norfolk & Western to Hagerstown. The record indicates that these routes were open and that the shipments could have moved via either.

Defendants contend that we are without jurisdiction to award damages for loss, damage, delay or conversion of property. In *L. & N. R. R. Co., vs. Ohio Valley Tie Company*, 342 U. S. 288, the Supreme Court said:

"The Court of Appeals decided that the Act to Regulate Commerce committed to the Interstate Commerce Commission only the granting of special relief against the making of an overcharge and that the satisfaction of the Commission's award still left open an action in the state courts to recover what are termed general damages—such as are supposed to have been recovered in this case. In this we are of the opinion that the court was wrong.

By Section 8 a common carrier violating the commands of the act is made liable to the person injured thereby "for the full amount of damages sustained in consequence" of the violation. By Section 9 any person so injured may make complaint to the Commission

or may sue in a court of the United States to recover the damages for which the carrier is liable under the act, but must elect in each case which of the two methods of procedure he will adopt. The rule [fol. 7] of damages in one can hardly be different from that proper in the other. * * * The decisions say that whatever the damages were they could be recovered; *Pennsylvania R. R. Co. vs. International Coal Mining Co.*, 230 U. S. 184, 202, 203; *Meeker vs. Lehigh Valley R. R. Company* 236 U. S. 412, 429; and the statute determines the extent of damages. *Pennsylvania Railroad Company vs. Clark Brothers Coal Mining Co.*, 238 U. S. 456, 472. We are of opinion that all damages that properly can be attributed to an overcharge, whether it be the keeping of the plaintiff out of its money, dwelt upon by the trial court, or the damages to its business following as a remoter result of the same cause, must be taken to have been considered in the award of the Commission and compensated when that award was paid."

The misrouting here was clearly a violation of the interstate commerce act, and the complainant having elected to prosecute its claim before us we may award reparation for whatever damages resulted as a consequence of such unlawful act.

Witness for complainant testified that the reasonable market value for the lath at Wilkes-Barre in October, 1917, was \$5.00 per 1,000 feet or about \$480.00 for the entire shipment, and at Hagerstown \$4.95 per 1,000 feet. Freight charges from Lyman to Hagerstown over the designated route would have been \$168.30.

We find that complainant made the shipment as described; that it was misrouted; that complainant was damaged by the misrouting in the amount of the difference between \$475.45, which we find to be the fair market value of the lumber in September and October, 1917, at Hagerstown, and \$168.30, the freight charges from Lyman to Hagerstown, this difference being \$307.15; and that it is entitled to reparation from the Gulf & Ship Island Railroad Company in the sum of \$307.15, with interest.

An appropriate order will be entered.

[fol. 8] HALL, Commissioner, dissenting in part:

I agree that this shipment was misrouted. The burden is upon complainant to show that the misrouting was the proximate cause of damage. This has not been done. The record does not show when or why the sale by complainant to the Lebanon Box Company was revoked. It may have been before the car left the Gulf & Ship Island and because of delay regardless of the route of movement. The Lebanon Box Company was in need of lath and agreed to buy this lath because it was in transit and quick delivery could be looked for. Complainant refused to accept delivery at Wilkes-Barre, the billed destination, although there had been no reconsignment and the charges were the same over the route of movement as over the route designated by the consignor.

If it were shown that the loss of the sale to the Lebanon Box

Company resulted from the misrouting, there would still be no warrant for fixing the amount of damage at the market price of the lath at Hagerstown less the freight to that point. The record does not show that this company was located at Hagerstown or that under the terms of sale the lath was to be delivered there. The instructions that the car "be held in transit for diversion" were addressed to representatives of the Pennsylvania at Harrisburg and the Cumberland Valley at Chambersburg, as well as the representative of the latter road at Hagerstown.

The shipment moved nearly five years ago. Complainant has not proved its case, if it has one, and the complaint should be dismissed.

Order

At a Session of the Interstate Commerce Commission, Division 3,
Held at Its Office, in Washington, D. C., on the 18th day of May,
A. D. 1922

No. 12250

WILLIAM DANZER & COMPANY, INCORPORATED,

vs.

GULF & SHIP ISLAND RAILROAD COMPANY, LOUISVILLE & NASHVILLE
Railroad Company, The Pittsburgh, Cincinnati, Chicago & St.
Louis Railroad Company, The Pennsylvania Railroad Company,
Western Lines, and Norfolk & Western Railway Company

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is [fol. 10] hereby referred to and made a part hereof:

It is ordered that the Gulf & Ship Island Railroad Company be, and it is hereby, authorized and directed to pay unto complainant, William Danzer & Company, Incorporated, on or before August 2, 1922, the sum of \$307.15, with interest thereon at the rate of 6 per cent per annum from October 3, 1917, as reparation on account of damages sustained due to the misrouting of carload of lumber shipped from Lyman, Mississippi.

By the Commission, Division 3.

George B. McGinty, Secretary. (Seal.)

[File endorsement omitted.]

[fol. 11] UNITED STATES OF AMERICA,
 Eastern Division of the Southern
 District of Mississippi, ss:

IN UNITED STATES DISTRICT COURT

SUMMONS AND SHERIFF'S RETURN—Filed May 8, 1923

The President of the United States to the Marshal of the Southern District of Mississippi, Greeting:

We command you, that without delay, you summon The Gulf & Ship Island Railroad Company, a corporation, defendant, having an office and place of business in said Division of said District of the State of Mississippi, that it be and appear at the District Court of the United States, to be held at the Court room thereof, in the City of Meridian, Mississippi, on the 2nd Monday of September next, the 10th day of September, 1923, to answer William Danzer & Company, Incorporated, a corporation, of a plea claiming reparation on account of damages due to a violation of the Interstate Commerce Act, the amount of said claim being \$307.15, with interest from the 3rd day of October, 1917, and that it do file its plea or defense in said Court on or before the said meeting thereof, or judgment will be given against it be default; and have you then there this writ, and how you have executed the same.

Witness the Honorable E. R. Holmes, Judge of the District Court of the United States, and the seal of our said District Court, this 28th day of April, A. D. 1923.

Jack Thompson, Clerk, by E. H. Dial, D. C. (Seal.)

[fol. 12] [File endorsement omitted.]

Received this summons May 7, 1923, at Jackson, Mississippi, and executed same May 7, 1923, at Jackson, Miss., by handing a true copy of this summons to F. P. Wilson, Agent for the Gulf & Ship Island R. R.

J. C. Tyler, U. S. Marshal, by J. H. Gearhart, Deputy.

[fol. 13] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION FOR SUBMISSION—Filed September 10, 1923

It is stipulated and agreed by and between the parties hereto through their attorneys as follows:

That this cause be submitted on the demurrer of the defendant to the declaration to be heard in vacation and decided thereon, and that the defendant file memorandum brief in suport of its demurrer

within twenty (20) days from this date and that plaintiff file reply brief within twenty (20) days thereafter, and defendant file rejoinder brief within five (5) days thereafter.

It is further stipulated that should the demurrer be overruled that issue be joined and the cause decided by the presiding Judge on the merits. It is further stipulated that the evidence in the case shall be as follows:

The stenographer's minutes of the proceedings before the Interstate Commerce Commission, the report including the finding of [fol. 14] facts and order by said commission.

It is further stipulated that the Court shall fix and assess such attorney's fee as shall be proper if the finding is in favor of plaintiff.

This 10th day of September, 1923.

Brenton K. Fisk, Atty. for Plaintiff. T. J. Wills, Atty. for Defendant.

[File endorsement omitted.]

[fol. 15] IN UNITED STATES DISTRICT COURT

[Title omitted]

SUBMISSION OF CAUSE—Filed September 10, 1923

It is ordered that the above styled cause be and the same is submitted to be heard in vacation by the Court in accordance with the stipulations made by and between the parties this day in said cause.

Ordered and adjudged this the 10th day of September, 1923.

O. K. E. R. H.

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT.

[Title omitted]

DEMURRER—Filed September 10, 1923

Now comes the defendant in the above styled cause and demurs to the declaration therein exhibited against it and for cause of demurrer assigns the following, to wit:

1. As construed and applied to the instant case by the Interstate Commerce Commission, Section 206, Paragraph F, of the Transportation Act of 1920 is unconstitutional and void because it seeks to revive a cause of action that was dead when the act was passed, and its revival constitutes a taking of defendant's property without due process of law, in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 17] 2. Section 16, Paragraph 2, of the Act to Regulate Commerce, insofar as it makes the finding of the Commission prima facie evidence in the instant case, is unconstitutional and violative of the Seventh Amendment of the Constitution of the United States, which said amendment guarantees the right of trial by jury where the value in controversy exceeds \$20.00.

3. The facts stated by the Interstate Commerce Commission show that an improper judgment was entered thereon and that the judgment should have been for the defendant and not for the plaintiff.

And for further causes to be assigned upon the hearing.

B. E. Eaton, T. J. Wills, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO CORRECT ERROR IN DEMURRER—Filed September 17, 1923

Application of Defendant to Correct Clerical Error in Its Demurrer
Filed in the Foregoing Cause

To the Honorable Edwin R. Holmes, Judge:

The defendant respectfully states to the Court that a clerical error occurs in stating the first ground of demurrer already filed by this defendant, in this: the statement is made that the act complained of was the taking of defendant's property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States. It was intended to say the Fifth Amendment and not the Fourteenth.

Wherefore application is made for permission to correct said error by striking out the word "Fourteenth," in the first ground of demurrer and inserting therein the word "Fifth."

[fol. 19] Respectfully submitted.

B. E. Eaton, Attorney for Defendant.

[File endorsement omitted.]

[fol. 20] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO CORRECT ERROR IN DEMURRER—Filed September 27, 1923

This cause coming on to be heard on the application of the defendant to correct the first ground of demurrer and the court being advised

that the statement in said demurrer was to the effect that the act complained of constituted a taking of defendant's property without due process of law in contravention of the Fourteenth Amendment to the constitution of the United States and that it was intended to charge in contravention of the Fifth Amendment, and not the Fourteenth, the Court hereby grants the application and hereby directs the Clerk to strike out the word "Fourteenth" in said ground of demurrer and to insert in lieu thereof the word "Fifth."

Ordered this the 18th day of September, 1923.

E. R. Holmes, Judge.

[fol. 21] [File endorsement omitted.]

[fol. 22] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SUSTAINING DEMURRER—Filed October 26, 1923

The failure of the plaintiff to file complaint within the two years from the time the cause of action accrued, prescribed by Section 16 of the Interstate Commerce Act, resulted in, not only the remedy being barred, but the liability destroyed by lapse of time. Consequently, Section 206 (f) of the Transportation Act will not here be construed as reviving the cause of action because, if so construed, it would be in violation of the Constitution of the United States.

Accordingly the demurrer will be sustained, and an appropriate order may be submitted for my signature by the attorney for the defendant.

This 25th day of October, A. D. 1923.

[fol. 23] E. R. Holmes, U. S. District Judge.

[File endorsement omitted.]

[fols. 24-31] EXHIBIT IN EVIDENCE: REPORT AND ORDER OF INTERSTATE COMMERCE COMMISSION—Omitted; printed side page 3 ante

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT—Filed February 6, 1924

This cause having come on regularly on Monday, the tenth day of September, 1923, being a day of the September term, A. D. 1923, of the District Court of the United States for the Southern District of Mississippi, Eastern Division, to be tried before the Court and a jury to be empaneled: Brenton K. Fisk, Esquire, appearing as attorney for the plaintiff; T. J. Wills, Esquire, appearing as attorney for defendant; and a stipulation, together with that certain finding of facts by the Interstate Commerce Commission therein designated,

having been filed in open Court, and it appearing that said stipulations contains an express waiver of the right of trial by jury herein; [fol. 33] and said cause having thereupon come on to be tried by the Court, sitting without a jury; and said cause having been duly presented by briefs and written arguments of counsel for both parties; and said cause having been submitted to the Court for its consideration and final decision; and on the 25th day of October, 1923, conclusions of law which finally dispose of the case having been filed by the Court herein, and the Court having ordered that, in accordance with such conclusions of law, final judgment be entered in favor of the defendant and against the plaintiff.

Now, therefore, by virtue of the law and by reason of the premises aforesaid, plaintiff declining to plead further, judgment is hereby rendered in favor of the Gulf & Ship Island Railroad Company, defendant herein, and against William Danzer & Company, Inc., plaintiff herein, but without costs.

This January 24th, 1924.

E. R. Holmes, Judge.

Judgment entered ———, 1924.

Jack Thompson, Clerk, by E. H. Dial, Deputy Clerk.

[fol. 34] [File endorsement omitted.]

[fol. 35] IN UNITED STATES DISTRICT COURT.

[Title omitted]

MOTION TO TAX COSTS—Filed September 10, 1923

Comes now the plaintiff and hereby moves the Court to tax against the defendant as a part of the costs in this case the plaintiff's attorney's fee for the work incident to the handling of the above styled cause in this court, said fee to be taxed in a reasonable sum, to wit, two hundred and fifty (\$25-.00) Dollars.

Brenton K. Fisk, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 36] IN UNITED STATES DISTRICT COURT.

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed February 18, 1924

Comes now William Danzer & Company, Inc., plaintiff herein and says:

That on or about the 6th day of January, 1924, the District Court entered judgment herein in favor of the defendant and against the plaintiff in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this

plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore, this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of said errors, and that a transcript of the record, pro-[fol. 37] ceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Brenton K. Fisk, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed February 18, 1924

The plaintiff in this action in connection with his writ of error, makes the following assignment of errors, which he avers occurred upon the trial of the cause, to wit:

First. The Court erred in sustaining the demurrer of defendant to the petition of the plaintiff.

Second. The Court erred in holding Section 206 (f) of the "Transportation Act of 1920," in its application to this cause, to be in violation of the Fifth Amendment to the Constitution of the United States.

Third. The Court erred in holding that the Fifth Amendment to the Constitution of the United States necessitates a construction of section 206 (f), "Transportation Act of 1920," which excludes the present cause from the operation and benefit thereof.

[fol. 39] Fourth. The Court erred in entering judgment in favor of the defendant.

Wherefore, the plaintiff prays that the judgment of the District Court be reversed.

Brenton K. Fisk, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING WRIT OF ERROR—Filed February 18, 1924

This 13th day of February, 1924, comes the plaintiff, by his attorney, and files herein and presents to the Court his petition praying for the allowance of a writ of error, and an assignment of errors

intended to be urged by him, praying also that a transcript of the records and proceedings and papers upon which the judgment herein rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the Court does allow the writ of error upon the plaintiff's giving bond according to law in the sum of One Thousand (\$1,000.00) Dollars.

E. R. Holmes, as Judge of the District Court of the United States for the Southern District of Mississippi.

[fol. 41] [File endorsement omitted.]

[fol. 42] THE UNITED STATES OF AMERICA, ss:

IN UNITED STATES DISTRICT COURT

WRIT OF ERROR—Filed February 18, 1924

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of Mississippi, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you, between William Danzer & Company, Inc., plaintiff, and Gulf & Ship Island Railroad Company, defendant, a manifest error has happened, to the great damage of the said William Danzer & Company, Inc., as by its complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment is herein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 14th day of March, next, in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to correct that error, what of right, and according to the laws and customs of the United States, should be done.

[fol. 43] Witness the Honorable William Howard Taft, chief justice of the United States, the 13th day of February, in the year of our Lord one thousand nine hundred and twenty-four.

Jack Thompson, Clerk of the District Court of the United States for the Southern District of Mississippi. (Seal.)

Allowed by E. R. Holmes, District Judge

[File endorsement omitted.]

[fols. 44-46] BOND ON WRIT OF ERROR FOR \$1,000—Approved and filed February 18, 1924; omitted in printing

[fols. 47 & 48] CITATION—In usual form, showing service on B. E. Eaton; filed February 18, 1924; omitted in printing

[fol. 49] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed February 18, 1924

Comes now William Danzer & Company, Inc., a corporation, the plaintiff in error above named, pursuant to Rule 8 of the Supreme Court of the United States, and for the purpose of enabling the clerk to prepare the record for appeal herein from the decision of the District Court to the Supreme Court of the United States, hereby request the clerk to incorporate the portions of the record into the transcript of the record of such appeal which are hereinafter indicated, to wit:

- (1) The petition or declaration with exhibits incorporated therein.
- (2) The process and return.
- (3) The defendant's demurrers.
- (4) The stipulation under which the cause was submitted for judgment.
- (5) The judgment.
- (6) The opinion of the Court.
- (7) The finding of facts and order of Interstate Commerce Commission with certification thereof filed as an exhibit.
- (8) Petition for writ of error.
- (9) Assignment of errors.
- [fols. 50 & 51] (10) Bond and approval.
- (11) Allowance of writ of error.
- (12) Writ of error.
- (13) Citation in error with return thereon.
- (14) Order of court that cause be heard in vacation.
- (15) Motion to tax attorney's fee on defendant.
- (16) Application to correct error on demurrer.
- (17) Order allowing such correction.
- (18) Clerk's Certificate.

Brenton K. Fisk, as Attorney for Plaintiff in Error.

I hereby accept service of a copy of the foregoing præcipe and waive all other or further service or notice thereof. This the 19th day of February 1924.

B. E. Eaton, as Attorney for Defendant in Error.

[File endorsement omitted.]

[fol. 52]

IN UNITED STATES DISTRICT COURT

[Title omitted]

DEFENDANT'S ADDITION TO PRÆCIPE FOR TRANSCRIPT OF RECORD—
Filed February 29, 1924

Now comes the Gulf & Ship Island Railroad Company, a corporation, defendant in error in the above styled cause, pursuant to Rule 8 of the Supreme Court of the United States, and for the purpose of enabling the Clerk to prepare the record for appeal herein from the decision of the District Court to the Supreme Court of the United States, hereby requests the Clerk to incorporate into the transcript of the record for such appeal that portion of the record embracing the decision of the Interstate Commerce Commission in the original complaint of the plaintiff herein, attached as Exhibit "A" to the plaintiff's bill of complaint in this cause.

B. E. Eaton, as Attorney for Defendant in Error.

I hereby accept service of a copy of the foregoing præcipe and waive all other or further service or notice thereof.

This the 29th day of February, 1924.

Brenton K. Fisk, as Attorney for Plaintiff in Error.

[fol. 53] [File endowment omitted.]

[fols. 54-60]

IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

I, Jack Thompson, Clerk of the District Court of the United States for the District and Division aforesaid, do hereby certify the above and foregoing to be a full, true and correct transcript of the record in the case of William Danzer & Company, Inc. a corporation, Plaintiff in Error, vs. Gulf & Ship Island Railroad Company, a corporation, Defendant in Error, according to the præcipe of the Plaintiff in Error, hereto annexed.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at office in the City of Meridian, this 5th day of March, 1924.

Jack Thompson, Clerk of the District Court of the United States for the Southern District of Mississippi. (Seal of of the U. S. District Court, Southern District of Mississippi.)

Endorsed on cover: File No. 30,235. S. Mississippi D. C. U. S. Term No. 346. William Danzer & Company, Inc., plaintiff in error, vs. Gulf & Ship Island Railroad Company. Filed March 31st, 1924. File No. 30,235.